

L. E. GARRISON

IBLA 80-817

Decided January 16, 1981

Appeal from a decision of the Oregon State Office, Bureau of Land Management, declaring mining claim OR MC 22407 abandoned and void.

Reversed and remanded.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim--Mining Claims: Abandonment--Mining Claims: Assessment Work

Under sec. 314(a) of the Federal Land Policy and Management Act of 1976 and 43 CFR 3833.2-1, the owner of an unpatented mining claim located on or before Oct. 21, 1976, and recorded with BLM in 1979, is required to file evidence of assessment work or notice of intention to hold the claim on or before Oct. 22, 1979. Failure to so file constitutes conclusive abandonment of the claim and renders it void.

2. Evidence: Credibility--Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim

Where a mining claimant submits evidence on appeal which supports a conclusion that all documents necessary to effectuate a filing under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), were

timely filed, a decision declaring a mining claim abandoned and void for failure to timely file the required documentation will be set aside.

APPEARANCES: James V. B. Delapoer, Esq., Long, Post, Delapoer, & Koos, P.C., Albany, Oregon, for appellant.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

L. E. Garrison appeals from the decision of the Oregon State Office, Bureau of Land Management (BLM), dated July 8, 1980, declaring the Present Need mining claim, OR MC 22407, abandoned and void for failure to file evidence of assessment work or a notice of intention to hold the claim for calendar year 1979, on or before October 22, 1979. The decision notes that other instruments and the filing fee required for recordation of the claim were timely filed.

In his statement of reasons and in an accompanying affidavit appellant asserts that he prepared a proof of labor for his mining claim on September 4, 1979, and recorded it with the recorder of Grant County, Oregon, on September 13, 1979. A copy of the document is attached to the affidavit. He indicates that the proof of labor was mailed with a copy of his location notice, a map, and the requisite filing fee to BLM during the third week in September. In addition, appellant has submitted the affidavit of Judi Garrison, his wife, who states that she telephoned BLM on October 19, 1979, to inquire whether BLM had received the documents. She indicates that she talked to a BLM employee who had the Garrison letter on his desk and who opened it while talking to her and confirmed that all of the necessary documents were in order and received. A copy of their telephone bill documenting the call to BLM in Portland is attached.

[1] Section 314(a) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744(a) (1976), requires the owner of an unpatented mining claim located prior to October 21, 1976, to file evidence of assessment work for the claim with BLM within the 3-year period following that date and prior to December 31 of each year thereafter. The corresponding Departmental regulation, 43 CFR 3833.2-1(a), reads:

The owner of an unpatented mining claim located on Federal lands on or before October 21, 1976, shall file in the proper BLM office on or before October 22, 1979, or on or before December 30 of each calendar year following the calendar year of such recording, whichever date is sooner, evidence of annual assessment work performed during the preceding assessment year or a notice of intention to hold the mining claim.

Failure to so file is considered conclusively to constitute abandonment of a claim under section 314(a) of FLPMA, 43 U.S.C. § 1744(c) (1976), and 43 CFR 3833.4.

[2] The real question which this case raises is whether or not all of the required documentation was timely received. BLM has been unable to locate the proof of annual labor. This Board has often noted the legal presumption of regularity which attends the official acts of public officers in the proper discharge of their official duties. See, e.g., Phillips Petroleum Co., 38 IBLA 344 (1978); Donald E. Jordan, 35 IBLA 290 (1978); A. G. Golden, 22 IBLA 261 (1975).

This presumption, however, is subject to rebuttal by probative evidence. See generally United States v. Hess, 46 IBLA 1, 7-9 (1980). In the instant case we have not only appellant's assertion that the envelope contained all the required documents, we have additionally the affidavit of his wife relating to a subsequent conversation with the BLM office, which conversation ensued simultaneously with the opening of the envelope in which she was informed that all the necessary documentation had been received. While we admit that there may still be room for doubt as to whether the proof of annual labor was filed, we hold that a preponderance of the evidence before us supports a finding that all required documents were, indeed, timely filed. Cf. Elliott Davis, 26 IBLA 91 (1976).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is reversed and the case files are remanded.

James L. Burski

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Administrative Judge

We concur:

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Bernard V. Parrette  
Chief Administrative Judge

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Anne Poindexter Lewis  
Administrative Judge

